

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

In the Matter of the )  
Federal Bureau of Prisons' Execution )  
Protocol Cases, )  
                        )  
LEAD CASE: *Roane et al. v. Barr*     )     Civil Action No.     19-mc-145 (TSC)  
                        )  
                        )  
THIS DOCUMENT RELATES TO:     )  
                        )  
ALL CASES     )  
                        )  
\_\_\_\_\_)

**CERTIFICATION OF THE ADMINISTRATIVE RECORD**

Pursuant to 28 U.S.C. § 1746, I, Jeffrey E.E. Toenges, declare and state as follows:

1. I am an Assistant General Counsel at the Federal Bureau of Prisons (BOP), Office of General Counsel, in Washington, D.C. I have been employed with BOP since September 2016, and have been employed as an attorney in the Federal Government for over 27 years.
2. I am responsible for the compilation of the Administrative Record regarding the revised BOP Federal Execution Protocol.
3. I certify that the attached index is a true and accurate list of materials that comprise the Administrative Record.

I declare under penalty of perjury that the above information is true and correct to the best of my belief.

Executed on: 8/29/19

  
\_\_\_\_\_  
Jeffrey E.E. Toenges

## INDEX TO ADMINISTRATIVE RECORD

	Document Type	Brief Description	Bates Numbers
1.	Administrative Record Summary	Summary of BOP single drug protocol	0001 - 0006
2.	Georgia Lethal Injection Protocol	State lethal injection protocol	0007 - 0019
3.	Idaho Lethal Injection Protocol	State lethal injection protocol	0020 - 0069
4.	Missouri Lethal Injection Protocol	State lethal injection protocol	0070 - 0071
5.	South Dakota Lethal Injection Protocol	State lethal injection protocol	0072 - 0082
6.	Texas Lethal Injection Protocol	State lethal injection protocol	0083 - 0091
7.	State-by-state lethal injection summary from the Death Penalty Information Center website, <a href="https://deathpenaltyinfo.org/lethal-injection">https://deathpenaltyinfo.org/lethal-injection</a>	Summary of state lethal injection protocols	0092 - 0105
8.	Internal talking points summarizing: The State of Florida lethal injection protocol evolution	Summary of Florida lethal injection protocol	0106
9.	Summary of States that currently or previously used pentobarbital, and aggregated data.	Summary of state lethal injection protocols that use pentobarbital	0107
10.	<i>Bucklew v. Precythe</i> , 139 S.Ct. 1112 (2019)	Case law	0108 - 0136
11.	<i>Zagorski v. Parker</i> , 139 S.Ct. 11 (2018)	Case law	0137 - 0139
12.	<i>Arthur v. Dunn</i> , 137 S.Ct. 725 (2017)	Case law	0140 - 0147

**INDEX TO ADMINISTRATIVE RECORD**

13.	<i>Glossip v. Gross</i> , 135 S.Ct. 2726 (2015)	Case law	0148 - 0200
14.	<i>Baze v. Rees</i> , 553 U.S. 35 (2008)	Case law	0201 - 0241
15.	<i>Ladd v. Livingston</i> , 777 F.3d 286 (5th Cir. 2015)	Case law	0242 - 0246
16.	<i>Zink v. Lombardi</i> , 783 F.3d 1089 (8th Cir. 2015)	Case law	0247 - 0272
17.	<i>Jackson v. Danberg</i> , 656 F.3d 157 (3d Cir. 2011)	Case law	0273 - 0281
18.	<i>De Young v. Owens</i> , 646 F.3d 1319 (11th Cir. 2011)	Case law	0282 - 0290
19.	<i>Pavatt v. Jones</i> , 627 F.3d 1336 (10th Cir. 2010)	Case law	0291 - 0296
20.	<i>Price v. Commissioner, Alabama Dep't (of Corrections</i> , 920 F.3d 1317 (11th Cir. 2019)	Case law	0297 - 0309
21.	<i>Arthur v. Commissioner, Alabama Dep't of Corrections</i> , 840 F.3d 1268 (11th Cir. 2016)	Case law	0310 - 0360
22.	<i>In Re: Ohio Execution Protocol</i> , 860 F.3d 881 (6th Cir. 2017)	Case law	0361 - 0384
23.	<i>McGehee v. Hutchinson</i> , 854 F.3d 488 (8th Cir. 2017)	Case law	0385 - 0400
24.	Rule 26(a)(2) Expert Report Declaration of Joseph F. Antognini, M.D. (in the case of <i>Bucklew v. Lombardi</i> , 2016 WL 11258099 (W.D.Mo.))	Medical Expert Report regarding use of pentobarbital in Missouri's lethal injection protocol	0401 - 0406
25.	Expert Deposition of Joseph Antognini, M.D. (2017 WL 9471457 (W.D. Mo.))	Deposition of medical expert addressing Missouri's lethal injection protocol	0407 - 0524
26.	Expert Report of Craig W. Lindsley, Ph.D., dated May 26, 2017	Expert review of lethal injection protocol using pentobarbital	0525 - 0526
27.	Transcript of Preliminary Injunction Hearing dated January	Transcript of medical expert testimony	0527 - 0761

**INDEX TO ADMINISTRATIVE RECORD**

	5, 2017, in <i>In re: Ohio Execution Protocol Litigation, in the U.S. District Court for the Southern District of Ohio.</i>		
28.	Deborah W. Denno, <i>Lethal Injection Chaos Post-Baze</i> , 102 GEO. L.J. 1331, 1382 (2014)	Law review/journal addressing lethal injection	0762 - 0808
29.	American Society of Anesthesiologists Statement Re: Hospira Market Exit on Production of Pentothal (sodium thiopental) (Jan. 21, 2011).	Remarks by the American Society of Anesthesiologists regarding the sole manufacturer of sodium thiopental ceasing production of the drug, dated January 21, 2011.	0809
30.	CNN article - <i>Death row inmate executed using pentobarbital in lethal injection</i> , December 16, 2010, <a href="http://www.cnn.com/2010/CRIME/12116/oklahoma.execution">http://www.cnn.com/2010/CRIME/12116/oklahoma.execution</a>	News media article	0810 - 0812
31.	Death Penalty Information Center, <i>Botched Executions</i> , <a href="https://deathpenaltyinfo.org/some-examples-post-furman-botched-executions?scid=8&amp;did=478">https://deathpenaltyinfo.org/some-examples-post-furman-botched-executions?scid=8&amp;did=478</a>	Article discussing execution mishaps	0813 - 0822
32.	Oklahoma Department of Public Safety Report: The Execution of Clayton D. Lockett	State of Oklahoma after action review of the execution of Clayton D. Lockett	0823 - 0854
33.	November 27, 2017, memorandum from BOP Director to the department (addressing proposed one-drug protocol) and attachment.	BOP memorandum proposing one-drug protocol and draft Addendum to BOP Execution Protocol	0855 - 0861
34.	March 7, 2018, memorandum from BOP Director to the department (addressing	BOP memorandum addressing use of fentanyl as part of a lethal injection protocol	0862 - 0865

## INDEX TO ADMINISTRATIVE RECORD

	fentanyl).		
35.	Draft Addendum to BOP Execution Protocol (one drug pentobarbital).	Draft BOP lethal injection protocol using pentobarbital	0866 - 0867
36.	Attorney General memorandum directing adoption of Addendum to the Federal Execution Protocol and July 24, 2019, memorandum from Acting Director to the department addressing anticipated adoption of one-drug protocol.	Attorney General memorandum adopting BOP recommendation on the Addendum to the Federal Execution Protocol and BOP memorandum summarizing lethal injection protocol using pentobarbital	0868 - 0934
37.	Letter from various State Attorneys General dated January 25, 2011, to Attorney General Eric Holder.	Letter from various State Attorneys General to the U.S. Attorney General	0935 - 0936
38.	Response letter from Attorney General Eric Holder dated March 4, 2011.	Attorney General letter responding to various State Attorneys General	0937
39.	Op. Off. Legal Counsel, 2019 WL 2235666 (May 3, 2019).	OLC slip opinion addressing FDA jurisdiction	0938-0963
40.	Draft lethal injection protocol using Propofol	Draft lethal injection protocol using propofol	0964-0965
41.	Draft lethal injection protocol using Midazolam, Sufentanil citrate, and Potassium Chloride	Draft three-drug lethal injection protocol	0966-0967
42.	Draft lethal injection protocol using Midazolam and Hydromorphone	Draft lethal injection protocol using midazolam and hydromorphone	0968 - 0969
43.	Lab reports	Lab reports/test results and certificates of analysis of pentobarbital	0970 - 1015
44.	BOP Execution Protocol	BOP Execution Protocol	1016 - 1067